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ERRATA.

P. 10 L. 26 *omit* "not".
P. 14 ,, 4 *for* "mortgagee" *read* "mortgage".
P. 49 ,, 10 *omit* "for".
P. 115 ,, 4 from bottom *for* "petitioner" *read* "petition".
P. 169 ,, 5 from bottom *for* "O. 2, R. 4" *read* "O. 21, R. 4".
P. 325 ,, 2 from bottom *for* "Wallace" *read* "Wallis".
P. 363 Ll. 15-16 *for* "contended" *read* "contented".
P. 446 L. 28 *for* "inconveniendi" *read* "inconvenienti".
,, ,, 30 *omit* "rather".
P. 451 ,, 11 *for* "repeal" *read* "defeat".
P. 452 ,, 9 *for* "void" *read* "is void".
P. 511 At end of the catchwords *add* "—As against assignee in good faith of the mortgage".
,, ,, 3 of the headnote, end : *for* "mortgagee" *read* "assignee in good faith of the mortgage".
,, ,, 5 of the headnote, *add after* "estopped" these words : "as against the assignee".
P. 533 ,, 33 *omit* the whole line.
P. 536 ,, 24 *for* "S. 66 (2)" *read* "S. 6 (2)".
P. 564 ,, 16 *for* "Rerferring" *read* "Referring".
P. 587 ,, 30 *for* "O. 2, R. 2" *read* "O. 21, R. 2".
P. 617 ,, 6 *for* "ino" *read* "into".
P. 653 ,, 3 *after* "Sadasiva Aiyar, J." *and before* "*In re* Krishnaswami Doss Reddi" *read* "quoted the judgment of Sundara Aiyar, J. in".
,, ,, 6 *omit* (.
,, ,, 10 *for* "gviving" *read* "giving".
,, ,, 15 *for* "Judges" *read* "Judge".
,, ,, 22 *after* "act" *and before* "alienation" *read* "of".
,, ,, 25 *for* "women's" *read* "woman's".
P. 658 ,, 6 *omit* comma *and for* "amendnig" *read* "amending".
,, ,, 26 *after* "getting" *before* "conveyance" *read* "a".
P. 668 ,, 9 *for* "either illegal or immoral" *read* "neither illegal nor immoral".
P. 670 Headnote *for* "prise" *read* "price"; *for* "undided" *read* "undivided".
P. 685 ,, 29 *for* "heir" *read* "share".
,, ,, 36 *for* "finio" *read* "finis".
P. 686 ,, 21 *for* "partiton" *read* "partition".
P. 689 ,, 19 *for* "case" *read* "cases".

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THE

MADRAS LAW JOURNAL.

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IV. REMINISCENCES OF THE BAR*

BY

SIR P. S. SIVASWAMI AIYAR.

Mr. V. Krishnaswami Aiyar was by far the most robust and powerful personality in the bar that I have known. If ever there was a man born to be an advocate, it was Mr. Krishnaswami Aiyar. I had the opportunity of knowing him for a much longer period than probably any other contemporary of his. We were fellow students in the High School at Tanjore, we were fellow students in the Kumbakonam College, in the Presidency College and in the Law Class. My knowledge of him began from the year 1876. I have known him as a student, an advocate, a platform speaker and as a politician, and I need hardly add, in private life as well. He was a man of striking talents which would have brought him to the front rank in any profession in any country. The opportunities that are open to men of talent in this country are by no means so varied or so conspicuous as those which are available to people in the countries of the West. If there was one characteristic of his which was more prominent than anything else and which perhaps might have been taken to be the key to his whole character, it was his energy. He was a man of exuberant energy. That was a characteristic in all the various spheres of his activity, in all the stages of his career. Intellectually he was of the first rank, a man of remarkable quickness of perception, of very clear vision, and thorough grasp of essentials and in addition he was a man of wonderful fertility of resource. He was always equal to any emergency at the bar or in politics or on the

* The last of a series of lectures delivered to the apprentices-at-law in 1918.

platform. These were qualities which certainly made for success and marked him out for success from the beginning. He was also one who carefully studied persons whom he considered worthy of being models. Probably there was only one person whom I could say he regarded as a model for study and that was Sir Bhashyam Aiyangar. Not that Mr. Krishnaswami Aiyar was himself wanting in those qualities which distinguished Sir Bhashyam Aiyangar, but he greatly improved upon them by a careful study of his model. He closely studied Sir Bhashyam Aiyangar's ways and methods. Sir Bhashyam Aiyangar's habit, to which I referred, of great circumspection—an expression which you will learn to understand by and by in its practical application, which implies a careful reconnaissance of your whole ground not leaving any one nook or corner unsurveyed, a preliminary survey of the whole ground of action and a careful forecast of all the contingencies that are likely to arise and the pitfalls before you or the stumbling blocks that you may encounter and a previous mental preparation to meet these various contingencies—that habit of circumspection was, I should say, the predominant characteristic of Sir Bhashyam Aiyangar's mental equipment, and Mr. Krishnaswami Aiyar was shrewd enough to note the advantage of cultivating that habit of circumspection. Another characteristic of Sir Bhashyam Aiyangar which also Mr. Krishnaswami Aiyar followed was the habit of long-headed calculation, of long-headedness in calculating beforehand what would follow and making an accurate forecast as far as possible of the development of the case or of any other course or policy that might have to be adopted. Then again Sir Bhashyam Aiyangar had a very cool temper. Mr. Krishnaswami Aiyar also followed him in this respect. It might perhaps require a word of explanation when I associate coolness with Mr. Krishnaswami Aiyar. Few people who knew him in the excitement of forensic debate or address would think that it was all the result of cool preparation or calculation. The excitement was so visible, the temper was often explosive, but if I may say so, while he had a naturally violent temper, he did his best to keep it well under control and almost always succeeded in doing it. You may hear the deafening roar of artillery but there was the cool brain behind all that. Whatever might be the appearance of excitement or spontaneity there was always a

cool well-calculated decision at the back of it. That was a trait which only they who knew him intimately could have marked and appreciated. Another lesson which he followed was the habit of studying how to present one's case. There was no one who more consciously and studiedly pursued the art of presentation of one's cases than Mr. V. Krishnaswami Aiyar. He always made a point of studying how best to marshal his facts and arguments, how to produce the best impression, what the weak points of his adversary were and what his own strong points were and how to make the best impression in the shortest possible time. These were all lessons which he drew from a study of Sir Bhashyam Aiyangar, and I need hardly say that the pupil—when I say pupil I do not mean to say a formal pupil—was not a whit behind the master. Added to that Mr. Krishnaswami Aiyar had virtues of his own. He was a man of dauntless courage—a heart that never quailed before any difficulty, great tenacity of purpose and strength of will. These were all characteristics which almost lay on the surface. He who ran might read them. He had great faith in what I may call forensic strategy and tactics, that is, the art of forming a plan of campaign beforehand, and of adaptation to the exigencies of the moment. I told you that his temper was not of the sweetest description, and that it was apt to be naturally violent and required control by training. His disposition was generally of a somewhat domineering character, but, as the Chief Justice said on the occasion when a tribute was paid to him after his death, he had the defects of his qualities—a domineering and impatient disposition which you can understand were the psychological results of the other traits that I have mentioned. He was a very shrewd judge of character and in fact he took credit to himself for great capacity in judging of character. One might perhaps be allowed to say that his tendency on the whole, while making allowances for shrewdness of judgment, was towards a somewhat harsh and uncharitable view. He was more or less of the same view as Carlyle who held that the world was peopled with nine hundred millions of people, mostly fools. Generally he had a lofty contempt for most people and Sir Arnold White said he did not suffer fools gladly—a characteristic which made itself somewhat painfully obtrusive to the weaker members of the bar when he ascended the bench. Taking all things together, in subtlety he might not

have been superior to Sir Bhashyam Aiyangar, in quickness of perception he might not have been superior to Sir S. Subramania Aiyar, in learning he might not have been superior to Mr. Sundaram Aiyar and in eloquence he might not have been superior to Mr. Norton ; but taking all in all there was no one who combined all the essentials of an advocate as Mr. Krishnaswami Aiyar did. He was undoubtedly the ablest all-round advocate that I have known at the bar in my time, and when I pronounce that opinion I include all the men whom I have known whether they belong to an earlier generation or to the same generation as myself. He had remarkable gifts of expression ; he had a great command of language, of fine literary language and his pronunciation and delivery were excellent. He had a clear enunciation, a loud voice and, what perhaps was not always a distinct advantage, an extremely rapid delivery. I do not think that any advocate whom I have known was more rapid in his delivery than Mr. Krishnaswami Aiyar was. Of course rapidity in his case was compatible with perfect distinctness. But with all that it was speed that would fill with despair any shorthand reporter who might try to follow him. He had to put a brake on himself to suit an ordinary shorthand writer. I have heard that Mr. Gladstone used to speak at a tremendous pace. I have not heard Mr. Gladstone but I have heard Mr. Krishnaswami Aiyar and I knew that he could speak at a pace which would baffle any reporter. His voice was not a sweet voice, but it was a good, powerful voice, one which he often raised to a thunderous pitch when he wanted. He had considerable facility in modulating his voice. When he got excited his voice acquired shrilness. You could hear at one wing of the High Court when he spoke at another. There were few other gentlemen equally gifted with such powerful lungs. And he knew his audience perfectly, whether it was in a Court or in a public meeting. One great besetting sin of public speakers is that they do not know when to stop. The process of winding up is left more or less to accident or nature. The result is prolixity and the audience gets bored. That was never the case with Mr. Krishnaswami Aiyar. He was a most pointed and effective speaker. He could compress his points into a nutshell, if he liked ; he could explain them if his audience were dull enough to require

explanation. But he knew how far he need go and where he should stop. He had a fine sense of proportion, what to emphasise, what to omit and what to pass over with a slight touch. His methods of advocacy were those of a strong man, of Samson. He believed in the display of the mailed fist. He always brought down his hand heavily upon his opponents, sometimes even crushing a butterfly on the wheel. He believed in hard, heavy, knock-out blows, nothing less. That was the style of battle which he liked. Naturally from what I have said of his mental equipment, this is a logical development and necessary consequence. His were not the virtues of gentleness. He was not obsessed by any extra tenderness for the feelings of his opponents or judges or witnesses or others. He liked to hit hard, he enjoyed a good fight and was like a war horse sniffing the battle. He believed in attaining victory at any cost. Victory first, never mind by what weapons of warfare. There was one reason which was responsible for this trait and it was this. He like many others had a habit of identifying himself with his clients. I do not say that he was as bad as many others, but many a member of our profession is apt to suffer from this failing to yield to the temptation of identifying oneself with his client. The result of this process of identification is that the advocate feels as if his whole reputation and his whole future were staked upon the issue of that particular case, and he had to win it by hook or by crook. It might be a very desirable thing to sympathise with your client, to do your best for him, and the policy of identification may also at times be very tempting. But that is not really the spirit of a high-minded advocate. One must cultivate some sense of detachment. You must be able to view the case of your client fairly impartially. I do not say that the advocate is under an obligation to put forward all the weak points in his client's case or expose himself to attacks. But one must take care not to carry his interest in the client's cause to such an extent as to make him feel that everything depends upon his success in that case. It may be advocacy of a sort but I do not think that it is the proper idea of advocacy. It is not the advocate's business to win by any means but win by fair means if possible. This process of identification is pardonable in a youngster—a newly fledged practitioner—who thinks that his whole future depends upon his success in the particular case and if he did not

win, he would lose his chances. But when a man has risen to the top of the ladder there is no justification for that frame of mind and he should, on the other hand, sedulously cultivate a spirit of fairness, a sense of detachment, the ability to be fair to everybody all round. If you believe in Prussian methods then it will be all different. But I do not think advocacy requires the employment of Prussian methods.

As one result of this tendency and as one result of his great faith in strategy and tactics, there was no one who practised the art of interruption to greater perfection than Mr. Krishnaswami Aiyar. His one rule was this : Let no dog bark while I speak, but I will bark whenever any one speaks. He would never allow his opponents to get a hearing. When his opponent got on his legs he would simply fusillade him with interruptions. If one were as ready to take as to give, it might be fair, though I do not think the process will be quite as agreeable and smooth as if both sides abstained from interruption. He had also the art of brow-beating it did not matter whom whether it was the Judge, his opponent or a witness. But as I said these were the defects of his very virtues and qualities and in your general summing up and estimating of a man's abilities and talents and position in the bar, these ought not to be allowed to weigh heavily in the balance.

As a Judge he exhibited the same characteristics of impatience and of brow-beating the practitioners and of course the result was this : he disposed of cases quickly, exceedingly quickly. It was one of his ideals of ambition to be quick in the disposal of cases and he was very much quicker than all his colleagues. But you see one great ideal of a Judge should be this—an ideal which was highly commended by Lord Esher regarding Lord Justice Cotton—an ideal which Sir Muthuswami Aiyar followed—namely, not merely should he be anxious to understand the case but he must also be anxious to make it clear to the practitioner that he had understood his case. That is the ideal of a great Judge. That was the ideal which Sir Muthuswami Aiyar followed. In Mr. Krishnaswami Aiyar there was no question that he himself understood the case. But he did not care a brass farthing to make the practitioner before him understand whether he had sufficiently grasped the case or not. He trusted to his own reputation for quickness with the bar and

he thought everybody must give him credit for understanding the case without much argument and waste of time. In that way he made himself as a Judge very unpleasant to many practitioners before him, but otherwise he was a good Judge. He was certainly anxious to do justice and to dispose of cases quickly; and he succeeded in both of his objects. It was not part of his ambition to write very learned judgments and to immortalise himself in the Law Reports. He often used to say that he did not care about it but wanted quick despatch of justice. He did not care at all whether he wrote judgments which would live. He was a man of warm impulses and he was what Dr. Johnson called a 'good hater' and a good friend. He had strong friends attached to him and bitter enemies which was what might be expected from an impulsive, warm character, especially when that character makes no attempt to conceal the feelings of the owner. I may just tell you one anecdote. There was one occasion when he met more than his match—I do not say in stentorian tones, but in another respect. That was in connection with his character as a politician and on the platform. There was a Congress held under the presidency of Mr. Lal Mohan Ghose and in the Subjects Committee Sir Pherozeshah Mehta presided during the absence of Mr. Lal Mohan Ghose. My friends, Mr. Krishnaswami Aiyar and Mr. Sundara Aiyar, were both there and the late Mr. G. Subramania Aiyar was also there. Our Madras people were very keen about what they called a constitution for the Congress. I am afraid the legal instinct has taken such strong root in Madras that we want to put everything on a thoroughly legal, definite, constitutional footing. Mr. Krishnaswami Aiyar spoke for a long time, for about 20 or 30 minutes and he pressed with all his vigour and all the emphasis at his command the need for having a definite, rigid constitution for the Congress. Sir Pherozeshah Mehta was an old man. He allowed others also to follow and then he spoke for 15 minutes. He pounded to pieces his opponents, and the most gratifying feature about it was that at the end it was acknowledged by both my friends that they had met more than their match and that they were roundly beaten. Sir Pherozeshah Mehta enjoyed greater advantages than most politicians. His political experience and influence were far vaster than anybody else's in this country. He

had begun politics in 1872 and he had been at politics for nearly 40 years. As a politician, Mr. Krishnaswami Aiyar's great merits were that he was a long-headed and clear-sighted man and very practical. He knew what was feasible and what was not and he knew how to score a point. He was very adroit in the management of men when he cared to do it. When he did not care to please anybody then he let himself go like a bomb. But at other times when he wanted to persuade anybody or to manage his colleagues there was nobody who could do it better; a man of great powers of persuasion —great powers of managing people and bringing them round to his views. He was a man of varied activities and interests in life. Ordinarily, once a man gets into the legal groove, he becomes confined to that groove and very narrow in his interests and occupation. But Mr. Krishnaswami Aiyar was a man who took interest in many things, in literature, politics, religion, social service, and he worked hard for education. The Vakils' Association is indebted to him in many ways. He was the most energetic Secretary the Association ever had and he resuscitated the Association after its period of death or hibernation somewhere in the eighties. He was one of those who were permanently associated with the *Madras Law Journal* and supported it. He was a very prominent member of the Senate and took great interest in the framing of the new regulations. In the Legislative Council when he went there to represent the University, he made his mark at once. Of course, in some directions his interest was not roused but who is there of whom we can say that he worked in so many spheres and worked successfully in all? There are very few people of whom it could be said that they had the same amplitude of interest or secondary occupations as he had. His mind was not very much open to the fine arts. I am not aware that he took any interest in pictures, statues or anything of that sort. He had some crude opinions about statues. When it was proposed to raise a statue to the late Sir T. Muthuswami Aiyar, he was one of those who most strenuously resisted the proposal and condemned it on the ground that it was thoroughly unutilitarian among other grounds. By a strange irony he himself has been perpetuated in a form which he condemned so unsparingly with regard to Sir T. Muthuswami Aiyar. I do not think pictures or statues or anything of that kind appealed to him. His mind was cast in a stern

mould. Once he spoke to me of his own great emotional sensitiveness. There was a talk between us about the comparative emotionality of himself and his deceased brother. I thought his brother was more emotional. Mr. Krishnaswami Aiyar denied it. 'I am more emotional,' he said. I said that if he ever shed any tears, they must have been iron tears like those which flowed down Pluto's cheek. He replied, 'No, you do not know me. I could shed real tears for anything which called for it—any play of the gentler emotions, sorrow, and so on.' Like many of our countrymen he thought that he himself was an exception to the ordinary frame of humanity, to the rules of hygiene and prudent management of health. He thought he could stand any amount of work and his constitution was made of iron, but unfortunately he succumbed to over-work. I remember that when Mr. Pattabhirama Aiyar died, both Mr. Krishnaswami Aiyar and Mr. Sundaram Aiyar remarked that he had sacrificed himself to over-work. That is just what happened in the case of my two friends. If there was one man who could have been called the lion of the Madras Bar, it was Mr. Krishnaswami Aiyar, though I may be pardoned for adding that at times I was disposed to think rather of the tiger, rather than the lion. Altogether his untimely death was a great loss to the Bar, to the Bench and to public life in this country, a life of great promise cut off prematurely.

A similar fate as a result of unsparing over-work overtook our friend, Mr. P. R. Sundara Aiyar, who was his great rival at the bar. He was also a martyr to work. Mr. Krishnaswami Aiyar and Mr. Sundara Aiyar were both great friends. They were two men between whom there was genuine mutual esteem. Mr. Sundara Aiyar was also a man of brilliant parts. He had a brilliant career in the Christian College. He was a distinguished student of logic and philosophy and was a tutor in the College when he took his B. L. degree. Naturally he had a taste for Law and he was a man who studied widely, who studied methodically and who liked to study principles as well as precedents. There were many respects in which there were marked differences between Mr. Sundara Aiyar and Mr. Krishnaswami Aiyar. Of course, in ability they were men of great natural parts. As a speaker and as an advocate, Mr. Sundara Aiyar struck you as more

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dignified. He had a natural dignity of manner, a more equable temperament, less liable to apparent excitement. As a speaker, Mr. Sundara Aiyar was one of the best at the bar. He had a good command of language. He had a good delivery with a fine, sonorous voice, a good, measured, slow delivery, unlike the lightning speed of Mr. Krishnaswami Aiyar. If one might criticise it at all, it might perhaps be said that occasionally he reminded one of the sermonising tone of the missionaries under whose influence he had been educated. There was this difference between his style of speaking and Mr. Krishnaswami Aiyar's. Mr. Sundara Aiyar's speaking was excellent. It was closely-reasoned. The argument was quite cogent. It was an appeal of reason rather than of sentiment. I do not think that one would imagine that it was ever aglow with emotion in the same way that Mr. Krishnaswami Aiyar's or Sir Subramania Aiyar's. It was not the white heat of Sir Subramania Aiyar nor the red heat of Mr. Krishnaswami Aiyar. It was a cold appeal to reason, clear cogent arguments, well marshalled though sometimes burdened with even unnecessary repetitions. He was one of our best lawyers who read largely, who loved to study long and who took a broad survey of principles. Unlike Mr. Krishnaswami Aiyar, Mr. Sundara Aiyar's ambition was to immortalise himself as a Judge. Mr. Sundara Aiyar's ambition was to leave a name behind as a learned Judge and he did succeed in achieving his ambition though his career was unfortunately brought to a very premature close. He had also the same fault of over-identification with his clients and fighting too much for victory. But as an opponent his manners were far more agreeable. In the matter of style as a speaker, there was not that literary flavour about it which characterised Mr. Krishnaswami Aiyar's speeches and I believe the real reason was this: Mr. Krishnaswami Aiyar was fonder of literature than Mr. Sundara Aiyar. I have heard them both, of course, numbers of times both at the bar and on the platform. As a platform speaker Mr. Krishnaswami Aiyar was undoubtedly the superior. As a forensic speaker it does not matter very much, especially when one has not got to address a jury often. If one had to pronounce an opinion upon their merits as speakers, I should certainly pronounce in favour of Mr. Krishnaswami Aiyar as the abler speaker of the two. Mr. Krishnaswami Aiyar was at his best when

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he was excited. But when he was not excited and delivered a calm, quiet speech, occasionally the pose looked a bit studiedly solemn. But taking all things together, I should say he was by far the best platform speaker on this side of India among our countrymen. I am not oblivious of speakers belonging to other walks of life who have spoken on the platform. Of course there have been speakers of various descriptions. Each has got his own excellences and each has got his own defects, but if one wanted to hear a speaker who could rouse an audience and exercise what may be called a magnetic influence Mr. Krishnaswami Aiyar was, I think, far and away the best. Mr. Sundara Aiyar's secondary interests were not so varied as those of Mr. Krishnaswami Aiyar. Mr. Sundara Aiyar had interested himself in politics and he did take some interest in religion and education, but his interest was not of the same intensity or varied character as Mr. Krishnaswami Aiyar's. Mr. Sundara Aiyar neglected the laws of health just like Mr. Krishnaswami Aiyar and became an early victim to that scourge of Indians, and eventually died prematurely. These two men I have mentioned as the leaders among my contemporaries, they formed a most excellent pair, worthy of the highest esteem and worthy of their own strong mutual esteem, and their loss is a loss to the country at large and the bar. But let us hope that there is as good fish in the sea as ever came out of it and let us hope that among the young men whom I see before me there may be some who may eclipse in their career the giants of the past.

PROFESSION TAX UNDER THE DISTRICT MUNICIPALITIES ACT.

S. 93 of the District Municipalities Act (V of 1920) raises some interesting questions. The section says that every person who exercises any profession or holds any appointment or is in receipt of a pension or income from investments or money-lending or any source other than houses and lands inside the Municipal limits shall pay a half-yearly tax on his *professional income*, salary and pension on the scale shown in Sch. IV. One of the questions arising under it is whether a person deriving income from houses and lands outside Municipal limits is liable to the tax. In a case reported in *Veerappa Chettiar v. Municipal Council, Palni* (1) their Lordships Wallace and Madhavan Nair, JJ., were inclined to the view that he would be

1. (1924) I L R 48 Mad 476 : 48 M L J 428.

liable, but as the case was decided on other grounds it does not appear that the question received adequate consideration in all its aspects. The concluding words of the section show that what should be taxed is *professional income* besides salary and pension specifically mentioned therein. The question, therefore, is whether income from lands can be treated as professional income. It can hardly be contended that the receipt of rent can be said to be in the exercise of a profession. It is also clear from the description given in Sch. IV that persons in receipt of a pension or income from any source other than houses and lands are treated differently from persons who earn an income from the exercise of " any profession, trade or calling." Besides R. 19 in Sch. IV lays down that the Chairman may classify all persons liable to the profession tax, except those who are in receipt of a fixed salary or remuneration, with reference to the nature and reputed value of their business. It appears, therefore, that the concluding words of S. 93 are mandatory and exclude those in receipt of income from houses and lands outside Municipal limits from the operation of the section, though the framers of the Act might perhaps have intended to bring them also within the section.

It may be contended that the words " inside Municipal limits" in the section qualify the words "houses and lands" and not the words "any source." If that is the right construction, then the words " any source " would include all kinds of income received by way of gifts, lotteries, legacies, maintenance, annuity, etc., which cannot possibly be said to have been received in the exercise of a profession. Besides, when general words are used, their meaning has to be restrained according to the context: " All words, whether they be in statutes or otherwise, if they be general and not express or precise, shall be restrained into the fitness of the matter or person "—Beale on Interpretation, S. 1352. The word "source" must, therefore, be construed as of a similar nature as " investments, money-lending, etc." and not refer to " houses and lands."

Again Sch. IV lays down the scale of income earned *per month* on which the tax is to be assessed, though it is leviable half-yearly. In the old Act (IV of 1884) it was laid down that while a person holding an appointment should pay the profession tax according to his salary *per month,* those carrying on business have to pay according to the *estimated annual* rental of the shop or place of business. In the present Act, those

receiving income from investments or money-lending or any source other than houses and lands within Municipal limits are placed on the same footing as those receiving pension or salary monthly. When it is specifically stated that the income should be so much a month, we must hold that the assessee should get a certain minimum amount each month so that he may be placed in a particular class. In this view it is clear that as the income from lands is not a monthly income but is received generally once a year, the word " source " cannot be construed to apply to lands.

Further, if the words "any source" are intended to include all kinds of income other than that from houses and lands within the Municipal limits, there would be no necessity for the elaborate description of different kinds of callings and the special mention of salary and pension as items liable to be taxed under S. 93. It would have been sufficient to state simply that profession tax was leviable on all incomes derived from any source whatsoever except incomes from houses and lands within the Municipal limits which are taxed separately.

Again, if profession tax is to be levied on all sources of income, it would become a second income-tax and the name would be a misnomer. It is submitted that we should not impute to the Legislature the intention of levying a second income-tax under the colour of a profession tax. The sources on which taxes are to be imposed are enumerated in S. 78. The Act authorises, among others, a levy of property tax on houses and lands within the Municipal limits, a profession tax on professional income, salary and pension, a tax on carts, carriages and animals, etc., which are within the Municipality. If the income from houses and lands outside the Municipality were intended to be taxed, it should have been included under the property tax and not under the profession tax. The intention, therefore, appears to be that the profession tax should not be another income-tax, much wider in its scope than under the Income-tax Act, under which agricultural incomes are excluded and several necessary deductions are made in connection with trade or business. Further, if it were to be a second income-tax, it would fall more heavily in certain cases than the ordinary income-tax. Thus the tax on the income from property outside Municipal limits is against the scope of the Act and the words " within Municipal limits " ought to qualify the word " source ".

A further question that arises in this connection is

whether the receipt of income from property outside Municipal limits is limited to income received within Municipal limits after meeting necessary expenditure incurred outside, such as taxes, establishment, improvements, etc., or whether it extends to all incomes without any deduction whatever, including moneys received by an agent living outside the Municipality and spent by him for the said necessary demands, in other words, the gross income whether received inside or outside the Municipal limits. The difficulty arises as the word " income " is not defined in the Act and as it is now attempted to apply it to purposes which are against the scheme of the Act. If the words " any source " are intended to apply to all kinds of income, there would have been some provision for necessary deductions as in the Income-tax Act, and this circumstance goes to show that these words must refer only to " within the Municipal limits. "

Another question that may be raised in this connection is, whether assuming that under S. 93 the income from lands outside the Municipal limits is liable to profession tax Zamindari lands are so liable. Their Lordships in the case above cited, *Veerappa Chettiar* v. *Municipal Council, Palni* (1), left the question open and remarked that it was not free from difficulty. Now, under Regulation XXV of 1802, the peishkush on a proprietary estate is fixed and cannot be increased. A percentage of the income from such lands levied in the name of profession tax is certainly an addition to the peishkush. It would "render entirely nugatory the guarantee of the fixity of demand which was the keynote of the Government policy." Vide *Chief Commissioner of Income-tax* v. *Zamindar of Singampatti* (2). As stated therein, although it may be competent to the Legislature to impose additional taxation on Zamindaries, " this can only be done expressly and not in general terms or by implication. " *Vide* Maxwell on the Interpretation of Statutes, Chap. VII, S. 3. There is nothing in the Act to indicate that the attention of its framers has ever been drawn to Regulation XXV of 1802 and we may fairly conclude that Zamindaries are not affected by the Act. If so, this would afford an additional ground for holding that the words " any source " cannot be referred to " houses and lands, " but must be read with the words " within the Municipal limits. "

N. S.

1. (1924) I L R 48 Mad 476 : 48 M L J 428.
2. (1922) I L R 45 Mad 518 at 525.

SUMMARY OF ENGLISH CASES

HARPER AND CO., LTD. *v.* MACKECHNIE AND CO., (1925) 2 K. B. 423.

Contract—Sale of goods—C. i. f. contract—Payment on receipt of shipping documents—Invalid insurance policy given —Implied warranty—Seller's liability for loss.

When a certificate of insurance is tendered by a seller of goods and accepted by the buyer in a c. i. f. contract, there is an implied warranty that it relates to an effective policy. of insurance which will remain effective at all material times. If in transit, the goods are damaged and it turns out that owing to non-disclosure of a material fact the underwriters refused to pay on the policy, the sellers will remain liable for the damage. In the case of a c. i. f. contract where there is a chain of sellers, there is a contract between the broker and the original seller, and each successive seller, if he chooses to accept a certificate of insurance and to pass it on to a buyer, undertakes to make good what the certificate assorts. The ultimate remedy, if there is any irregularity, shifts back until it reaches the original seller and the brokers themselves.

FENTON *v.* OWNERS OF SHIP KELVIN, (1925) 2 K. B. 473.

Workmen's Compensation Act, 1906, *S.* 2 (1) (*a*)—*Notice of accident—Latent injury—Delay in giving notice—Excusing of—Reasonable or sufficient cause—Question one of law.*

One of the crew of a trawler, being shipwrecked, was exposed to the weather and remained in his wet clothes for three or four days till he was rescued. Beyond feeling a bit shaky, he felt no other ill effects and subsequently went on some other voyages and during the course of the same found he was affected with bladder trouble. On his return he consulted doctors, who prohibited him from going to sea, but it was not till two months later that he ascertained for the first time his illness was due to the exposure to which he had been subjected in the shipwreck. He thereupon gave notice to his employers, claiming compensation under the Act, and they pleaded that notice of the accident had not been given to them as soon as practicable, and that there was no reasonable cause to excuse the delay. *Held,* the workman was bound to give notice only

when he realized that he had suffered injury by the accident, which gave rise to a claim for compensation, *i. e.*, when he first came to know of the inter-connection of cause and effect between the accident and the incapacity from which he was then suffering.

Per Atkin, L. J.—What is and what is not reasonable cause is a question of law. But when that is once settled, the Court has to find on the facts of the case whether they bring it within that reasonable cause. [The corresponding provision in India is S. 10 of Act VIII of 1923.]

HUNTER *v.* STADTISCHE HOCHSEEFISCHEREI, ETC., (1925) 2 K. B. 493.

Workmen's Compensation Act—Applicability—Foreigner—Employment of workmen in the country—If bound by Act.

Per Warrington, L. J.—A foreign employer who employs a British subject to do work in the United Kingdom must be taken to employ him upon all the terms and conditions by which employment there is regulated, including in particular the condition entitling the workman to compensation for injury by accident.

Per Atkin, L. J.—The operation of the Act is confined to employment within the territorial limits; and there is no reason based on the comity of nations why such provisions should not extend to foreigners who pursue their activities within the realm.

MOSS *v.* CHRISTCHURCH RURAL DISTRICT COUNCIL, (1925) 2 K. B. 750.

Damages—Measure of—House burnt down owing to negligence of defendant.

A spark from a steam-roller set fire to a cottage, seriously damaging the fabric and destroying a quantity of the household effects therein belonging to a weekly tenant. On the evidence it was found the defendants were negligent and that the steam-roller constituted a nuisance. *Held*, the defendants were liable in damages, the measure of it being the difference between the money value of the owner's interest before and after the fire. The cost of replacement is not the proper test in such a case.

COOPER *v.* STUBBS, (1925) 2 K. B. 753 : 94 L. J. K. B. 903.

Income-tax—Cotton broker—Speculations in—Contracts for future delivery—Nature of—Gambling—If a trade or vocation—Income-tax Act, 1918, *Sch. D.*

A cotton broker, part of whose business was to enter into contracts for future delivery without any intention of taking up actual cotton or of using the contracts as hedges for actual transactions in order to safeguard his position, was sought to be assessed to income-tax with respect to the profits arising therefrom.

Held, per Pollock, M. R., even though his transactions were of a speculative nature, he carried on a trade or business within the meaning of Sch. D, para. 1, and was assessable to income-tax.

Per Warrington and Atkin, L. JJ.—The fact that the transactions were gambling transactions is irrelevant for the purposes of deciding if the profits were taxable. Such profits amounted to annual gains or profits within the meaning of Sch. D, para. 1 (*b*) and were hence liable to pay tax under Case VI.

THE KING *v.* THOMAS DWYER, (1925) 2 K. B. 799.

Criminal trial—Evidence—Identification—Photographs—Use of—Procedure.

Where in a criminal trial, the identifying witnesses had been shown two good photographs of the accused before the process of identification was formally entered upon, a conviction could not be sustained. It is one thing for a police officer, who is in doubt upon the question who shall be arrested, to show a photograph to persons in order to obtain information or a clue upon that question. But it is most improper to inform a witness beforehand, who has to be called as an identifying witness, by the process of making the features of the accused person familiar to him through a photograph. The fair thing is to show a series of photographs and see whether the person who is expected to give information can pick out the appropriate person.

FOX *v.* FOX, (1925) P. 157 : 94 L J P. D. & A. 75.

Divorce—Alimony—Order when to be made—Decree absolute—Matrimonial Causes Act, 1907, *S.* 1.

The power of a Divorce Court to require the husband to secure to the wife permanent alimony arises "on any decree for dissolution of the marriage." This does not mean that the order must be made at the same moment that the decree for dissolution is made. It may be made before the decree and in anticipation of it, upon materials which enable the Court to make the order for the maintenance at the same time as the decree for dissolution. Alimony *pendente lite* can be made as late as after a *decree nisi* for dissolution of the marriage has been made, and is to continue until, on the decree absolute for dissolution, its effect ceases, and it is replaced by the order for permanent alimony or maintenance.

The fact that a decree absolute is to be, or has been made, must be kept clearly in view, as otherwise or independently there would be no jurisdiction to make the order for permanent maintenance.

IN THE ESTATE OF J. R. SOUTHERDEN : ADAMS *v.* SOUTHERDEN, (1925) P. 177.

Will—Revocation—Mistaken view as to law of intestacy—Burning of will—Effect of—Fulfilment of condition—Wills Act, S. 20.

A person shortly before going on a voyage made a will giving all his property to his wife, but after returning burnt the will under the erroneous belief that if he died intestate, all his property would go to his widow. *Held,* the revocation was not operative and the will can be orally proved, as the revocation is based on a condition which is not fulfilled.

A revocation founded on an assumption of fact which is false, takes effect unless, as a matter of construction, the truth of the fact is the condition of the revocation, or, in other words, unless the revocation is contingent upon the fact being true.

Per Atkin, L. J.—Under the Wills Act, 1837, S. 30 (corresponding to S. 70 of the Indian Succession Act XXXIX of 1925) the Court has to consider whether it was the intention of the testator by burning his will to revoke it. To put a will into the fire simply is only destroying a piece of paper.

THE SUSQUEHANNA, (1925) P. 196.

Shipping—Collision—Damages—Measure of—Vessel used by Admiralty on service—Likelihood of letting on hire—Basis of assessing damages.

A vessel belonging to the Admiralty was damaged by collision. It was of a class sometimes chartered for commercial purposes, but it was admitted that the particular vessel damaged would not have been let out for hire. The question arose whether in assessing damages the commercial value, if let on hire, could be a proper basis of assessment. *Held*, by the Court of Appeal, confirming the judgment of the President of the Probate Court (*Lord Merrivale*) the basis can only be the actual loss suffered by the Admiralty in being deprived of the vessel during the period of repairs and not such as can only be called hypothetical or suppositious.

Per Bankes, L. J.—The ordinary rule of damages in a Common Law action applies but the wrongdoer cannot say that the question being one of a claim for damages, those damages must be nominal.

JOTTINGS AND CUTTINGS.

The Protection of Dogs.—A point of some practical importance to all who live in rural areas came before the Divisional Court at the end of last term in *Barnard* v. *Evans* (1925, W. N. 234). This was a case stated by the justices of Merthyr Tydfil, in Glamorganshire, and turned on the right of shooting animals which trespass possessed by occupiers of property The case stated that the respondent, a farm labourer, had been summoned by an Inspector of the R. S. P. C. A. under S. 1 of the Protection of Animals Act, 1911, on the charge of cruelly ill-treating a dog by shooting at it and wounding it contrary to the above statute. The dog was a spaniel which was playing with another dog in a field belonging to the defendant's employer. It was alleged that, when the labourer saw it, the dog was chasing fowls ; acting on his master's instructions he took a gun and fired at the dog. It was not suggested that the man acted maliciously, or that he did not believe his action necessary to protect the fowls ; but it was suggested that it was in fact unnecessary, and that he could have driven away the dog without resorting to this extreme measure. There was no hedge round the field, and the labourer had not attempted to drive it off before shooting at it. The dog received a number of pellets in its body and was badly wounded. In these circumstances the justices had dismissed the summons; but the Divisional Court sent back the case with a direc-

tion to convict on the ground that the defendant had not discharged the onus of proof cast upon him to show justification for his act. *Prima facie,* the shooting of a dog is cruelty and an offence under the statute. It may be justified by showing reasonable necessity : *Vere* v. *Lord Cawdor* (1809, 11 East, 568). Mere trespass by the dog does not render it necessary or reasonable to shoot it, nor is the absence of intent to hurt the animal a sufficient plea in justification, although *Hooker* v. *Glany* (1907, 71 J. P. 337) and *Powell* v. *Knight* (1878, 42 J. P. 597) were usually regarded, and were in this case regarded, by justices as authorities to the contrary. The Divisional Court, however, distinguished, or perhaps even overruled the latter cases, and laid down clearly the rule that the wilful causing of pain without justification to a trespassing animal is cruelty for the purpose of the Act of 1911, even in the absence of any active *malitit* on the part of the defendant. Apparently, in order to justify in the present case, the defendant would have had to prove, first, that the animal was doing very serious damage; (2) that he had tried to drive it away, but failed ; and (3) that there was no less drastic remedy reasonably open to him.

—*The Law Journal,* December 5, 1925, p. 975.

The Right to Remain in Prison.—A situation almost Gilbertian has arisen in the States with regard to the granting of a pardon to a convicted felon and its polite but firm refusal by the felon concerned, if report is to be believed. We confess that we can hardly believe it, much as we are should like to, if only for the fascinating novelty of the points which it raises or suggests. The position is this : *A*, murders *X*, but, before he is apprehended, also commits a less offence with regard to *Y*. As to the latter offence he is immediately caught, tried, convicted and imprisoned. Next he is tried and convicted of the murder of *X*, but when it is proposed to inflict the death penalty, "Not yet," says *A*; " I have my term of imprisonment to serve and I insist upon serving it." Here is a case of opinion of counsel such as no *A* has ever yet, we suppose, propounded ! Meanwhile the State authority proposes to resolve the dilemma by pardoning *A* of his offence in respect of *Y*, so that he may be available forthwith to be dealt with in respect of his murder of *X*. If pardons are privileges which the intended object of them may refuse at will, here undoubtedly is a pardon which would never be accepted. We regret

that more serious matters of the law prevent our dealing at length with this intriguing question. We venture to recommend it to the promoters of a Moot.

—*The Law Journal,* December 5, 1925, p. 976.

The Cost of Appeals.—All lawyers must sympathise with the complainings, to which a correspondence in the columns of the *Times* has recently given vent, as to the cost to the layman of appeals which are essential, and, therefore, invaluable to lawyers. The instance, a revenue case, discussed by Sir Henry Buckingham, is perhaps less striking than the instance quoted by Mr. Danvers Power, which we take to be the leading case of *Russell* v. *Russell;* why should a litigant have to pay a sum, put at twenty thousand pounds, "for his country's mistake, if such it can be called, in a matter where six Judges were for, and three against him." (We may add *sotto voce* " and where, it is generally conceded, the three Judges, whose opinion prevailed, were wrong, and the six Judges, whom they overruled, were right." It does seem hard. On a more profounded consideration, we all come to the conclusion, without much difficulty, that appeals are an essential element of the law and its administration, and every experience of an attempt to exclude them has been discouraging. We readily persuade ourselves, moreover, that the only practicable means of securing appeals but limiting them to appealable cases, is to leave it to the litigant to question the Court's decision at his own risk. The very weighty letters in the *Times,* however, lead us to wonder if we have not, as a people, been perhaps rather too sweeping in our refusal to finance appeals in cases which are patently, and which were from their inception patently about to be, leading cases, the fullest discussion and the most careful decision of which were and are matters of just as much importance to the public at large as to the individual appellant and respondent ?

—*The Law Journal,* December 12, 1925, p. 999.

Sentences of the Past.—"Harsh sentences" has been lately a topic of discussion in the press, and both sides of the debate appear to have reason. Generally speaking, sentences have undeniably long since ceased to be of a character even stern, let alone unconscionable: in particular, instances equally undoubtedly occur in which there is excess if they be regarded from any point of view which is not merely that of vengeance.

It is not necessary to engage in the argument. It is, however, well to recall, for our own peace of mind, what immense strides we have made in humanitarianism and good sense in this essential department of community life, and in how short a time we have made them. We recall a recent case in which Horridge, J., was discussing a prospective sentence, evidently to be something between six or eighteen months hard labour, and in which the antecedents showed that the convicted man had committed the same offence in his youth and had been sentenced to seven years penal servitude! The mind reverts, with incredulity and horror, to the "Case of Mary Jones" so emphatically "speaking for itself" in the preface to *Barnaby Rudge*: a poor woman ruthlessly executed, not a century and a half ago, in circumstances in which, to-day, any judge would instantly have bound her over, and would have invited the sympathy of the appropriate officer or institution to a case of sheer distress.

—*The Law Journal*, December 12, 1925, p. 999.

BOOK REVIEWS.

WILLS ON CIRCUMSTANTIAL EVIDENCE, re-edited with Indian Law by Mr. Krishnamachariar, M. A., M. L., PH. D. of the Madras Judicial Service. Messrs. Butterworth & Co. (India), Ltd., 1925. Price Rs. 8.

Mr. Wills' essay is too old and classical to require anything like an introduction to the profession even in India. Whether in view of the form and state of the Law of Evidence in this country, a disquisition like that of Mr. Wills can be of much assistance in our practical or daily work is another matter. But Courts in India have often referred to Mr. Wills' essay and as Sir Alfred Wills observes, "the principles and the nature of the mental operations involved are common to forensic enquiry and to the ascertainment of truth in any other department of human activity........and it is of great importance to have just ideas of the processes we are using and of the grounds upon which the rapid judgments which appear to be spontaneous or instructive are really founded." In this view the book is one of general and permanent value and to the Indian Judge or practitioner its value is greatly enhanced by the inclusion in it of cases where either by following the authority of the author or by an independent but similar process of reasoning, Courts in India have in their judgments

illustrated the application of the several aspects discussed in the essay. The Indian cases have been fully and freely availed of and, as far as possible, dovetailed into their proper places. We have no doubt that with this addition the book will be more widely appreciated and used in this country. We would, however, observe that it would have been better if (as is often done) the distinction between the original text and the new additions has been preserved by the adoption of suitable typographical devices. To take an instance at random, there is a quotation on page 83 from Bacon and the original text, commenting upon it, proceeded to say : " In the instance *here* given by Bacon.......... " This continuity is certainly marred by the insertion between the two passages of a long sentence dealing with a case reported in *Emperor* v. *Jeolu* (1). We however notice that the discussion of Indian Law and cases is generally tacked on only towards the end of the treatment of the appropriate heading in the original text.

"NEGLIGENCE FOUNDED ON RIGHTS" with a theory of the Law of Torts based on a conflict of Rights, by F. S. Vaz, B. A., B. SC., LL. B. of the Inner Temple, Barrister-at-Law. Price Rs. 10.

Amongst the legal publications of the day, it is not often that one comes across a thought-provoking book. Mr. Vaz's book certainly exacts the attention of the reader and in some places it is not easy to follow the discussion without close attention. Few will be disposed to disagree with his statement that the Law of Torts in England has grown in a haphazard manner and that it is eminently desirable to have a scientific exposition of the law. Whether any single principle or even a combination of principles can be formulated on which the whole system may be based or justified, it is not easy to say ; some portions of the law rest on considerations of expediency and these may well vary from time to time. Nevertheless attempts like the present to examine the philosophical or rational foundations of the system are not without their use and we earnestly hope with the author that his work will serve to stimulate inquiry along lines likely to give better results than the haphazard manner in which the subject is at present treated in treatises on the Law of Torts.

Though mainly dealing with the Law of Negligence, the work is an attempt to formulate a theory of the Law of Torts;

1. (1916) I L R 39 A 161.

and different heads of the Law of Negligence have been chosen for the purpose of illustrating the application of that theory in the light of the existing case-law under those heads. The first portion of the book is taken up with the exposition of the general theory that the Law of Torts is only 'an adjustment of the conflict of rights.' The author groups legal rights under certain heads 'Negative Rights,' 'Privileged Rights,' 'Positive Rights,' 'Qualified Rights' and 'Limited Rights' according to the extent of protection which the law affords to each in its attempt to adjust the conflict amongst them. The rest of the work attempts to show that negligence in law consists in exceeding a 'limited right' with the consciousness of the likelihood of causing damage to the person or property of another. The discussion of leading English authorities in the light of the principle thus enunciated is alike refreshing and instructive. Among the principal heads treated are the law relating to the master's liability for the torts of his servants, the liability of bailees, Railway companies and Highway authorities and the law of contributory negligence. In numerous places the author has endeavoured to point out how several conflicts and errors in the course of decisions in England could have been avoided if the true principles underlying the subject have been prominently kept in view.

We have great pleasure in inviting the special attention of our readers to Mr. Vaz's book and we can confidently recommend that it deserves a place in every lawyer's library.

THE SUCCESSION ACT, 1925, by P. Hari Rao, High Court Vakil. The Law Printing House, Madras. Price Rs. 2.

We have great pleasure in acknowledging the receipt of the publication by the Law Printing House, Madras, of the Indian Succession Act, 1925, with brief notes of case-law by Mr. P. Hari Rao, the statement of objects and reasons, notes on clauses and the report of the Joint Committee.

THE LAWYER'S COMPANION DIARY, 1926.

We are glad to acknowledge the receipt of the *Lawyer's Companion Diary*, 1926, brought out by the Lawyer's Companion Office, Mount Road, Madras.